

NO. 532

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FILED

AUG 5 1922

WM. R. STANS

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Supreme Court of the United States.

October Term, 1922.

**SIMON HECHT AND SUMMIT L. HECHT,
TRUSTEES,**

v.

**JOHN F. MALLEY, FORMER COLLECTOR
OF INTERNAL REVENUE.**

**ARTHUR L. HOWARD AND ROBERT S.
BARLOW, TRUSTEES,**

v.

**JOHN F. MALLEY, FORMER COLLECTOR
OF INTERNAL REVENUE.**

**ARTHUR L. HOWARD AND ROBERT S.
BARLOW, TRUSTEES,**

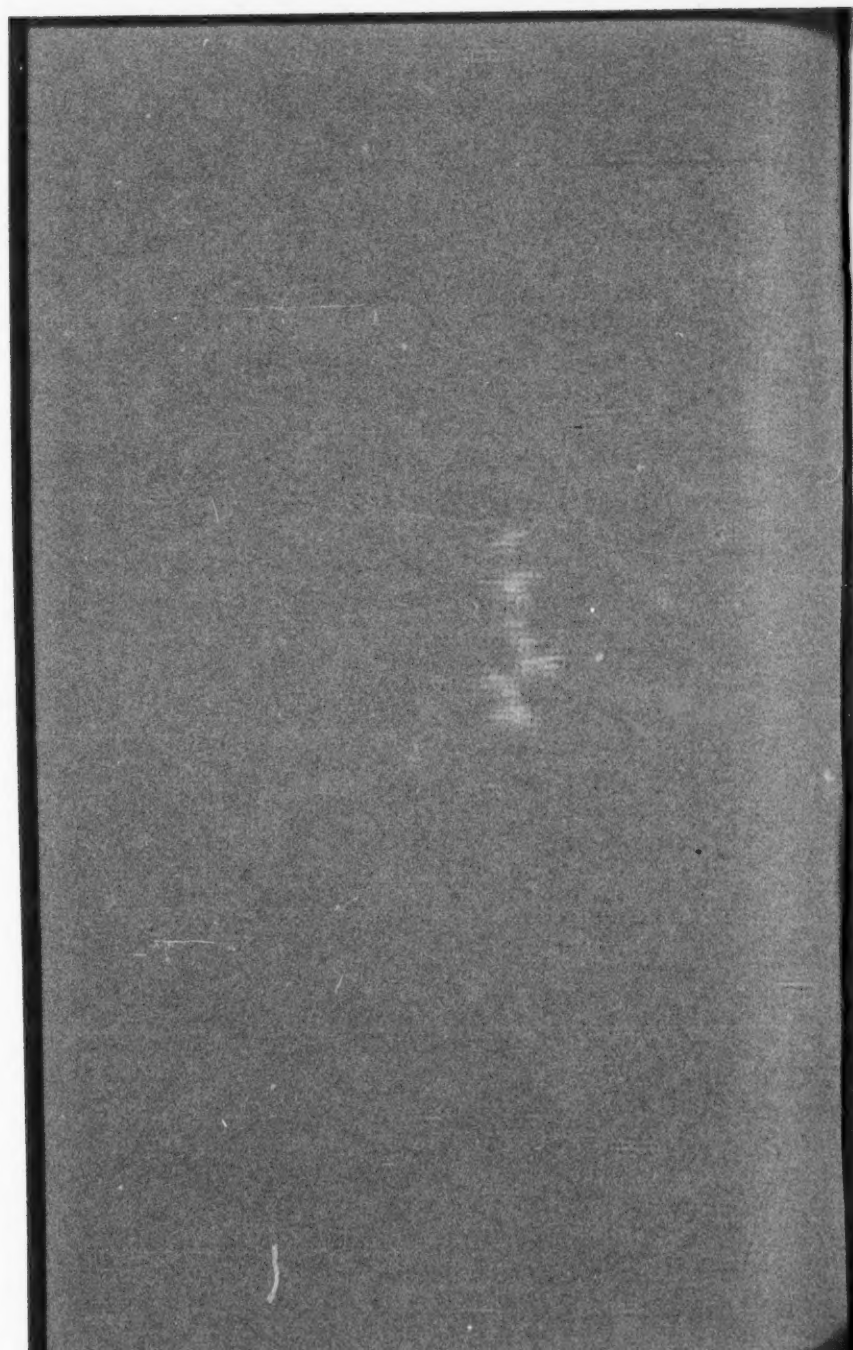
v.

**ANDREW J. CASEY, FORMER ACTING
COLLECTOR OF INTERNAL REVENUE.**

**Petition for Writ of Certiorari to the Circuit
Court of Appeals for the First Circuit.**

**WILLIAM H. DUNBAR,
EDWARD F. McCLENNEN,
Counsel for Petitioners.**

July, 1922.



Supreme Court of the United States.

OCTOBER TERM, 1922.

SIMON HECHT AND SUMMIT L. HECHT, TRUSTEES,
v.

JOHN F. MALLEY, FORMER COLLECTOR OF INTERNAL
REVENUE.

ARTHUR L. HOWARD AND ROBERT S. BARLOW,
TRUSTEES,
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ARTHUR L. HOWARD AND ROBERT S. BARLOW,
TRUSTEES,
v.

ANDREW J. CASEY, FORMER ACTING COLLECTOR OF
INTERNAL REVENUE.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the First Circuit.

*To the Honorable the Chief Justice and Associate Jus-
tices of the Supreme Court of the United States:*

Your petitioners Simon Hecht and Summit L.
Hecht, trustees of the Hecht Real Estate Trust, and

Arthur L. Howard and Robert S. Barlow, trustees of the Haymarket Trust, respectfully petition this Court for Writ of Certiorari to require that there be certified to this Court, for review and determination, the cause the record of which remains in the Circuit Court of Appeals for the First Circuit, numbered 1551, 1552 and 1554, wherein Louis Hecht, Jr. (now deceased), and your petitioners Simon Hecht, Arthur L. Howard and Robert S. Barlow were the original plaintiffs in the District Court for the District of Massachusetts and the defendants in error in the Circuit Court of Appeals, and the respondents were the original defendants and plaintiffs in error, and wherein final judgments have been entered pursuant to a single decision of the Circuit Court of Appeals for the First Circuit whereby the decision of the District Court in the petitioners' favor is reversed. These actions were brought by the petitioners in said District Court for refund of capital-stock taxes assessed against these plaintiffs and paid by them as follows:

Louis Hecht, Jr., and Simon Hecht.

Under Revenue Act of 1916, for six months ending June 30, 1917	\$325.25
Under Revenue Act of 1916, for the year ending June 30, 1918	650.50
Under Revenue Act of 1918, for the year ending June 30, 1919	657.50
Under Revenue Act of 1918, for the year ending June 30, 1920	1193.00

Arthur L. Howard and Robert S. Barlow.

Under Revenue Act of 1916, for the year ending June 30, 1919	\$74.50
Under Revenue Act of 1918, for the year ending June 30, 1919	168.50
Under Revenue Act of 1918, for the year ending June 30, 1920	189.00

These payments were made under protest to the collectors at the time in office, who are sued for refund of these payments with interest thereon from the several dates of payment.

The plaintiffs claim, and claimed in the District Court and in the Circuit Court of Appeals, that they were not subject to the capital-stock tax imposed by the acts of 1916 and 1918. The District Court so held, and gave judgment for the plaintiffs. The Circuit Court of Appeals reversed this decision in a single decision for all cases, rendered June 6, 1922. The facts have been found and stated in detail by the Court. They are as follows:

The Hecht Trust: Members of the Hecht family holding title as tenants in common to real estate conveyed it in 1899 to Jacob H. Hecht to hold in trust for the beneficiaries named, and their assigns. Certificates for one thousand (1000) shares were issued to the beneficiaries severally in accordance with their proportionate interests. The trustee and his successors have managed the property since and distributed the net rentals to the shareholders. No meetings of the shareholders have been held. No amendment of the trust had been made when this case was tried. Some shares have been transferred. Annual statements have

been sent to shareholders. The books contain, among others, a capital account and a surplus account. Transfers have been made from surplus to capital. Shareholders in their individual income-tax returns have treated the distributions from the trust in the same manner as dividends from a corporation. The trustees under protest have filed returns as required by the Commissioner of Internal Revenue and paid the assessments in question, levied by him as a capital-stock tax (Record, pp. 95 to 105). The indenture of trust (Record, pp. 76 to 87) declares that the trust shall be known as the Hecht Real Estate Trust; that it shall continue for twenty years after Jacob H. Hecht's death; that transferable certificates shall be issued to the beneficiaries to be offered to the trustee before any sale except to a member of the Hecht family; that the trustee shall have full powers of management, including sale of the trust property and purchase of other, and power to borrow and mortgage, but no power to create any personal liability on the shareholders; that the trustee may appoint one or more co-trustees; that the trustee shall fill all vacancies except that Louis Hecht, Jr., and Marcus H. Hecht, successively, shall succeed Jacob H. Hecht; that the shareholders may direct an increase in the number of trustees or remove a trustee by a deed executed by the holders of three fourths of the shares, and may, if there is no trustee to make the appointment, appoint a new trustee by a deed executed by the holders of three fifths of the shares, and may modify or terminate the trust or give instructions to the trustee by deed executed by the holders of three fifths of the shares. The shareholders have no powers of direct control.

The Haymarket Trust: In September, 1900, joint owners of a building in Boston gave a broker an option to purchase it. At his suggestion, John V. Bryant and Frank E. Sweetser, as trustees, drew an indenture of trust to be signed by them and subscribing shareholders who should furnish the money to make the purchase. The money was subscribed. The trustees acquired the property under the option and paid the broker \$2500 for obtaining the subscriptions. The trustees issued certificates for transferable shares to the subscribers. The trustees and their successors have managed the property and distributed the income. They have made annual statements. Annual shareholders' meetings have been held. Vacancies caused by death and resignation have been filled by the election of new trustees by the shareholders. Shares have been transferred. The trustees, under protest, have filed returns as required by the Commissioner of Internal Revenue and paid the assessments in question, levied by him as a capital-stock tax (Record, pp. 10 to 26). The indenture of trust (Record, pp. 34 to 42) declares that the trustees shall be known as Trustees of the Haymarket Trust; that the trustees shall have general powers of management including powers of mortgage and sale, and to invest any surplus, but no power to bind the shareholders personally; that persons contracting with the trustees should look only to the trust property; that shareholders shall receive transferable certificates; that income above five per cent shall go into a sinking fund to retire mortgages; that annual meetings of shareholders shall be called, and special meetings may be; that at meetings the holders of a majority of the entire number of shares

may fill any vacancy in the number of trustees, may depose any trustee and elect others, may authorize the sale of the property, and may amend the agreement and may decide on matters properly coming before them; that the trust shall continue for twenty years after the death of the last survivor of named individuals.

This decision and judgment of the Circuit Court of Appeals for the First Circuit, your petitioners are advised, is final and erroneous, and the decision of the District Court was correct, and this Honorable Court should require the case to be certified to it for its review and determination. The reasons relied on by your petitioners for the issuance of said writ, and upon which your petitioners believe that this petition ought to be granted, are summarized as follows:

The interpretation placed upon section 407 of the Revenue Act of 1916 and upon section 1000 (a) of the Revenue Act of 1918 by the Circuit Court of Appeals to include your petitioners as subject to the capital-stock tax, is erroneous and is in conflict with the decision of this Court in *Eliot v. Freeman*, 220 U.S. 178, and *Crocker v. Malley*, 249 U.S. 223, and was rendered in test cases and involves questions of great public importance affecting large amounts of money throughout the several circuits, and requires decision by this Honorable Supreme Court.

Your petitioners present herewith a certified copy of the entire record in the said cause, including the opinion of the District Court and the opinion of the Circuit Court of Appeals for the First Circuit. Louis Hecht, Jr., died on March 6, 1922, and Summit L. Hecht

has been appointed a trustee of the Hecht Real Estate Trust in his place.

WHEREFORE your petitioners respectfully pray that a Writ of Certiorari be issued, to the end that the said cause may be reviewed and determined by this Honorable Court, as provided by law, and that said decision of the Circuit Court of Appeals for the First Circuit be reversed and the judgment of the District Court for the District of Massachusetts be affirmed by this Honorable Court; and that your petitioners may have such other and further relief in the premises as to this Court may seem just and proper.

SIMON HECHT,
SUMMIT L. HECHT,
ARTHUR L. HOWARD,
ROBERT S. BARLOW,

By their Counsel,

WILLIAM H. DUNBAR,
EDWARD F. McCLENNEN.

COMMONWEALTH OF MASSACHUSETTS.

COUNTY OF SUFFOLK, ss.

JUNE 21, 1922.

I, William H. Dunbar, being duly sworn, depose and say that I am one of the counsel for the above-named petitioners and that the matters in the foregoing petition are true to my personal knowledge.

WILLIAM H. DUNBAR.

Then and there subscribed and
sworn to before me,

BERTHA A. PATTEN,
Notary Public.

[notarial seal]

I do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay, and that in my opinion the case is a proper one for the issuance of the Writ of Certiorari prayed for.

EDWARD F. McCLENNEN,
Counsel for the Petitioners.

SUPREME COURT OF THE UNITED STATES.

October Term, 1922.

SIMON HECHT AND SUMMIT L. HECHT, Trustees,
*v.*JOHN F. MALLEY, Former Collector of Internal
Revenue.

ARTHUR L. HOWARD AND ROBERT S. BARLOW, Trustees,
*v.*JOHN F. MALLEY, Former Collector of Internal
Revenue.

ARTHUR L. HOWARD AND ROBERT S. BARLOW, Trustees,
*v.*ANDREW J. CASEY, Former Acting Collector of Internal
Revenue.

ACCEPTANCE OF SERVICE.

John F. Malley and Andrew J. Casey, by their attorneys of record, hereby accept service of notice that a petition for Writ of Certiorari in the above-entitled cause will be applied for in this Court on July 31, 1922, and will be submitted to this Court at the opening of the Court at its first sitting thereafter, or as soon thereafter as counsel can be heard, in pursuance of its rules in such cases made and provided, and that said respondents have received a copy of this